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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

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9 Kip Daniels,

10 Plaintiffs,

11 v.
12 Maximus Federal Services
13 Defendant

No. CV-22-01702-SMB

ORDER

14 Before the Court is Defendant Maximus Federal Services Inc.'s ("Maximus")
15 Motion for Summary Judgment ("MSJ"). (Doc 58.) Plaintiff Kip Daniels filed a Response
16 (Doc. 66), and Defendant filed a Reply (Doc. 68). Defendant also filed a Separate
17 Statement of Undisputed Material Facts in Support of the MSJ. (Doc. 59.) Plaintiff
18 submitted a Controverting Statement of Facts and Separate Statement of Facts in response.
19 (Doc. 67.) After consideration of the pleadings and the relevant law, the Court finds that
20 oral argument is not necessary. *See* LRCiv 7.2(f) ("The Court may decide motions without
21 oral argument."). For the reasons below, the Court will grant in part and deny in part
22 Defendant's Motion.

23 **I. BACKGROUND**

24 This Motion pertains to a dispute underlying Plaintiff's employment with Defendant
25 Maximus. (Doc. 59 at 3.) Maximus "contracts with government agencies to provide
26 services to manage and administer government-sponsored programs and, at the time of
27 Plaintiff's hire, was looking to develop Independent Medical Review (IMR) solutions for
28 state workers' compensation programs." (*Id.* ¶ 1.) Maximus hired Plaintiff as its Vice

1 President of Sales and Capture in May 2019. (*Id.* ¶ 2.) He was hired on with an annual
2 base salary of \$200,000 and would be eligible for a two-component bonus structure
3 comprised of (1) a short-term transition bonus schedule and (2) the “program.” (*Id.* at 3
4 ¶ 3.) Program bonus payments would be between two and six percent of the Annual
5 Contract Value (“ACV”) which depended on the size of contract brought in. (*Id.* ¶ 5.)
6 Bonus payments would be capped at three times an employee’s base pay, meaning
7 Plaintiff’s were capped at \$600,000. (*Id.*) However, if his commission earnings exceeded
8 this cap, a manager was permitted to award a discretionary bonus to make additional
9 commission payments. (*Id.*) Plaintiff’s offer letter went on to provide that these bonus
10 credits would be “tracked on a fiscal year basis but the payments may overlap with future
11 year wins.” (*Id.* at 4 ¶ 6; Doc. 59-2.) Any earned bonuses would be paid out in four equal
12 installments: (1) on contract signing; (2) within ninety days of signing; (3) within 180 days
13 of signing; and (4) within 270 days of signing. (Doc. 59 at 4 ¶ 8.) All of this is collectively
14 known as the May 2019 Agreement. (*Id.* at 3–4.) Before beginning with Maximus,
15 Plaintiff signed a second offer letter, the June 2019 Agreement, confirming his \$200,000
16 starting salary and that his employment was “at-will” and “subject to its policies, programs,
17 and practices as may be adopted or amended from time to time.” (Doc. 59-11; Doc. 59 at
18 4 ¶ 11.) Plaintiff began work at Maximus in July 2019. (Doc. 59 at 4 ¶ 13.)

19 In March 2020, Maximus began contracting with government agencies to assist with
20 issues related to the COVID-19 pandemic. (Doc. 59 at 5 ¶ 17.) Plaintiff began working in
21 this capacity, with some duties including providing unemployment claims assistance in
22 both North Carolina and Arkansas. (*Id.* ¶ 17.) Plaintiff also helped provide testing results
23 and contact tracing efforts. (*Id.*) Plaintiff received six guaranteed bonuses from starting
24 through Fiscal Year (“FY”) 2020, as well as an alleged accidental bonus payment. (*Id.*
25 ¶¶ 18–19.) Plaintiff alleges that Maximus owes him bonus payments for eleven other FY
26 2020 contracts. (*Id.* at 6 ¶ 20.) Plaintiff also alleges Maximus owes him bonus payments
27 for nine FY 2021 contracts. (*Id.* at 7 ¶ 25.) Defendant alleges that Plaintiff was paid, even
28 in excess, of the contracts he was bonus eligible for that year. (*Id.* at ¶¶ 26–27.) Plaintiff

1 also alleges Defendant owes him bonus payments for six contracts from FY 2022. (*Id.* at
 2 8 ¶¶ 30–31.) Defendant asserts they paid Plaintiff for every FY 2022 contract he was bonus
 3 eligible for. (*Id.* at 9 ¶¶ 32–33.)

4 Halfway through FY 2021, Plaintiff emailed Maximus’ Health Division President
 5 Tom Naughton about sales bonuses he believed Maximus owed him. (*Id.* at 9 ¶¶ 34–35.)
 6 These email conversations continued through June 2022. (*Id.* at 9–10.) Plaintiff, while
 7 still employed with Maximus, filed this action in September 2022 and continued to contact
 8 Maximus alleging unpaid commissions. (*Id.* at 10 ¶ 39–41.) In March 2023, Maximus, as
 9 part of “reduction in force,” terminated Plaintiff’s employment, and Plaintiff did not accept
 10 the offered severance. (*Id.* at 11 ¶¶ 44–45.) In June 2023, Plaintiff amended his Complaint
 11 to also allege wrongful termination. (*Id.* ¶¶ 46–47.)

12 Now Plaintiff brings claims for unpaid wages, breach of the implied covenant of
 13 good faith and fair dealing, and unlawful termination. (Doc. 31.) Before the Court is
 14 Defendant’s Motion for Summary Judgement on each of these counts. (Doc. 58.) The
 15 Court will address the unpaid wages claim, the wrongful termination claim, and then the
 16 claim for breach of good faith and fair dealing in that order.

17 **II. LEGAL STANDARD**

18 Summary judgment is appropriate in circumstances where “there is no genuine
 19 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
 20 Fed. R. Civ. P. 56(a). Material facts are those that may affect the outcome of a case under
 21 the applicable substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
 22 Factual disputes are genuine when the evidence could allow a reasonable jury to find in
 23 favor of the nonmoving party. *Id.* “A party asserting that a fact cannot be or is genuinely
 24 disputed must support the assertion by . . . citing to particular parts of materials in the
 25 record” or by “showing that an adverse party cannot produce admissible evidence to
 26 support the fact.” Fed. R. Civ. P. 56(c)(1)(A)–(B). Additionally, the Court may enter
 27 summary judgment “against a party who fails to make a showing sufficient to establish the
 28 existence of an element essential to that party’s case, and on which that party will bear the

1 burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

2 When considering a motion for summary judgment, a court must view the evidence
3 in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co., Ltd. v.*
4 *Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The Court must draw all reasonable
5 inferences in the nonmovant’s favor. *Anderson*, 477 U.S. at 255. Additionally, the Court
6 does not make credibility determinations or weigh the evidence. *Id.* at 253. The
7 determination of whether a given factual dispute requires submission to a jury is guided by
8 the substantive evidentiary standards that apply to the case. *Id.* at 255.

9 The burden initially falls with the movant to demonstrate the basis for a motion for
10 summary judgment, and they must identify “those portions of [the record] which it believes
11 demonstrate the absence of a genuine issue of material fact.” *Celotex Corp.*, 477 U.S. at
12 323. If this initial burden is not met, the nonmovant does not need to produce anything.
13 *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102–03 (9th Cir. 2000).
14 However, if the initial burden is met by the movant, then the nonmovant has a burden to
15 establish that there is a genuine issue of material fact. *Id.* at 1103. The nonmovant “must
16 do more than simply show that there is some metaphysical doubt as to the material facts.”
17 *Zenith Radio Corp.*, 475 U.S. at 586. Bare assertions alone do not create a material issue
18 of fact, and “[i]f the evidence is merely colorable, or is not significantly probative,
19 summary judgment may be granted.” *Anderson*, 477 U.S. at 247–50 (citations omitted).

20 **III. DISCUSSION**

21 **A. Unpaid Wages**

22 Plaintiff first brings a claim for lost wages under the Arizona Fair Wages Act, Ariz.
23 Rev. Stat. § 23-355. (Doc. 31 at 11.) Defendant moved for summary judgment on this
24 claim. (Doc. 58 at 11.) For the reasons explained below the Court will grant in part and
25 deny in part the Motion as to this claim.

26 Under the Arizona Fair Wages Act (the “Fair Wages Act”) “if an employer . . . fails
27 to pay wages due to an employee, the employee may recover in a civil action against an
28 employer . . . an amount that is treble the amount of unpaid wages.” Ariz. Rev. Stat. § 23-

1 355(A). Commissions are included under the Fair Wages Act. Ariz. Rev. Stat. § 23-
2 350(7).

3 Here, Plaintiff alleges that after September 2020 Maximus failed to pay his
4 commissions in accordance with the May 2019 Agreement, thereby violating the Arizona
5 Wage Act. (Doc. 31 at 3, 11.) Plaintiff further alleges that despite the May Agreement's
6 language, he was never paid a discretionary commission bonus while employed with
7 Maximus. (*Id.* at 3 at ¶ 27.) Outside of not being paid a discretionary bonus while at
8 Maximus, Plaintiff also alleges that for FY2021 he was only paid \$200,000 in commission
9 where under the three times salary cap, he should have been paid at least \$600,000 as his
10 earned commission would have been \$607,734.74 based on the ACV of the contracts he
11 worked on. (*Id.* at 4 ¶¶ 29–34.) Plaintiff lists out each individual contract and alleged
12 earned commission in his FAC. (Doc. 31 at ¶¶ 35.) Plaintiff alleges Maximus wrongfully
13 withhold earned commissions for FY2022 as well, where Plaintiff would have at least
14 earned the capped \$600,000 in commission and was only paid \$210,510.50. (*Id.* at ¶¶ 36–
15 40.) He lists out each individual contract and alleged earned commission from this fiscal
16 year in his ACV as well. (*Id.* ¶ 41.)

17 Defendant alternatively argues that Maximus is entitled to summary judgment as to
18 the unpaid wages claim because “the bonus cap provision is unambiguous” in that sales
19 bonuses “are capped at 3X of base pay” and “are tracked on a fiscal year basis” even if “the
20 payments may overlap with future year wins.” (Doc. 58 at 12.) Defendant therefore argues
21 that they are entitled to summary judgment on contracts where Maximus already paid
22 Plaintiff up to the \$600,000 cap that fiscal year. (Doc. 68 at 3.) Despite this, Plaintiff
23 argues that because the Agreement also outlines an installment plan for these payments,
24 which Defendant did not always follow, he is still owed installments on bonuses from FY
25 2019–2020 that bled over into the following fiscal year, FY 2020–2021. (Doc. 66 at 7.)
26 This, however, would place him well over the \$600,000 fiscal year cap. (*Id.*)

27 The Court will not construe one provision in a contract to render another provision
28 meaningless. *Norman v. Recreation Centers of Sun City, Inc.*, 752 P.2d 514, 517 (Ariz. Ct.

1 App. 1988). However, that is what Plaintiff is asking the Court to do with these payments.
2 This interpretation—strictly enforcing the installment provision—would read the agreed-
3 to cap right out of the May 2019 Agreement. It is undisputed that for FY2019–2020
4 Plaintiff was correctly paid his commissions in two lump installments of \$275,000 on
5 August 9, 2020 and \$325,000 on September 6, 2020. (Doc. 59 at ¶ 20.). This undisputedly
6 reaches the \$600,00 cap for the year. Accordingly, as to contracts for FY2019–FY2020
7 which reached the \$600,000 cap, the Court will grant Defendant’s motion for summary
8 judgment on the Fair Wages Act claim.

9 However, there is a clear issue of fact surrounding FY 2021 and FY 2022, whereby
10 Plaintiff alleges he is owed a minimum of approximately \$400,000 commission for each
11 year, because Defendant failed to even pay up to the bonus cap. (Doc. 31 at 3 ¶¶ 20; 32.)
12 Defendant argues Plaintiff was either paid out for contracts arising under these years, or
13 that the alleged unpaid commissions arise from bonus ineligible contracts. (Doc. 58 at 12.)
14 Defendant alleges that in accordance with the May Agreement, Maximus changed the
15 bonus program’s provisions to compensate employees for bringing in new business, and
16 accordingly made it so employees would not be paid commissions on sales opportunities
17 unless they included “pre-marketing and client and partner interface and [was] not an
18 opportunity that was identified upon RFP release.” (*Id.* at 13.) Defendant also alleges
19 COVID related sales were commission ineligible because “[t]he pandemic could not have
20 been within the contemplation of the parties at the time Maximus hired Plaintiff.” (*Id.*)
21 Plaintiff alleges that he was never told that these kinds of contracts were commission
22 ineligible. (Doc. 68 at 4–5.) In fact, Plaintiff alleges that he even was previously paid for
23 RFP/RFQ contracts. (Doc. 66 at 4.) The Court agrees with Plaintiff that under the terms
24 of the Agreement there is a factual dispute as to whether he was entitled to commission, up
25 to the cap, for “large state and commercial agreements” and that there is nothing
26 specifically in the Agreement precluding him from receiving commissions on these
27 contracts. (*Id.* at 4.) Defendant’s assertion that they can change the bonus structure at any
28 time, and do not have to give notice of such change, does not alter this analysis.

1 Accordingly, because there is a factual dispute on whether Plaintiff was paid up to the
2 \$600,00 cap for these two fiscal years in accordance with the Agreement, the Court will
3 deny Defendants motion for summary judgment on the Fair Wages Act claim as to FY
4 2021 and 2022.

5 **B. Unlawful Termination**

6 Plaintiff, in his amended Complaint, also brings a claim for wrongful termination
7 under the Arizona Employment Protection Act (“AEPA”). (Doc. 31 at 12.) Defendant
8 moved for summary judgement on this claim. (Doc. 58 at 14.) For the reasons explained
9 below, the Court will grant the Motion as to this claim.

10 AEPA provides, in relevant part, that an employee has an actionable claim for
11 wrongful termination where:

12 (c) The employer has terminated the employment relationship of an
13 employee in retaliation for any of the following:

14 (i) The refusal by the employee to commit an act or omission that would
15 violate the Constitution of Arizona or the statutes of this state.

16 (ii) The disclosure by the employee in a reasonable manner that the employee
17 has information or a reasonable belief that the employer, or an employee of
18 the employer, has violated, is violating or will violate the Constitution of
19 Arizona or the statutes of this state to either the employer or a representative
20 of the employer who the employee reasonably believes is in a managerial or
21 supervisory position and has the authority to investigate the information
22 provided by the employee and to take action to prevent further violations of
23 the Constitution of Arizona or statutes of this state or an employee of a public
24 body or political subdivision of this state or any agency of a public body or
25 political subdivision.

26 Ariz. Rev. Stat. § 23-1501(A)(3)(c). To prevail, the plaintiff bears the burden of
27 establishing either that the employer terminated his employment because he refused to
28 violate Arizona law, or because he reasonably believed the employer violated Arizona law
and reported it. *See Rowberry v. Wells Fargo Bank NA*, No. CV-14-01801-PHX-DLR,
2015 WL 7273136, at *4 (D. Ariz. Nov. 18, 2015).

Here, Plaintiff alleges that he was terminated not because of workforce reduction as
alleged by Defendant, but rather because he reported that he was not being paid his

1 commission—a violation of Arizona wage laws. (Doc. 31 at 12.) Defendant, however,
 2 argues that Plaintiff cannot recover under the wrongful termination statute because the
 3 violations of § 23-355 and 350(7) that Plaintiff alleged have their own remedial scheme,
 4 making it unable to be a base statute on which to allege an AEPA violation. (Doc. 58 at
 5 15.) This District has conflicting opinions on this point.

6 As Plaintiff notes, several decisions from this District, and Arizona state courts,
 7 have found that a plaintiff can bring an AEPA termination/retaliation claim premised on
 8 violations of wage laws. *See Secord v. Marketo Inc.*, No. CV-18-03142-PHX-GMS, 2020
 9 WL 1033165, at *2 (D. Ariz. Mar. 3, 2020) (recognizing § 23-350 can be a base statute for
 10 an AEPA claim); *Medina v. Chas Roberts Air Conditioning, Inc.*, No. CV 05-4214-PHX-
 11 SMM, 2006 WL 2091665, at *2 (D. Ariz. July 24, 2006) (finding that plaintiffs there
 12 “stated a cognizable state law retaliation claim stemming from the filing of their Class
 13 Action complaint that [defendant] violated an Arizona wage statute.”).

14 However, more recently courts in this District have been holding the opposite. In
 15 *Jett v. County of Maricopa*, No. CV-19-02735-PHX-DLR, 2022 WL 345004, at *3 (D.
 16 Ariz. Feb. 4, 2022) the court found that where an alleged violated law had its own remedial
 17 scheme, including the wage laws, a plaintiff could not lay out a prima facie case of
 18 retaliation under AEPA. *Id.* This Court also briefly addressed the issue when it granted
 19 summary judgment for an employer on an AEPA claim after finding plaintiffs recovering
 20 for unpaid wages are “granted no statutory right to pursue an action for remedies other than
 21 those provided by the Fair Wages Act.” *Kuramoto v. Heart and Vascular Center of*
 22 *Arizona, PC*, No. CV-20-00113-PHX-SMB, 2021 WL 2012668, at *6 (D. Ariz. May 20,
 23 2021). Judge Humetewa recently applied this reasoning and cited several other cases in
 24 *Guernsey v. Elko Wire Rope Inc.*, No. CV-21-00848-PHX-DJH, 2023 WL 5348567, at *3
 25 (D. Ariz. Aug. 21, 2023). There, the court also held that the Fair Wages Act cannot be a
 26 base statute on which to allege retaliation under AEPA. *Id.* In *Guernsey*, the court walked
 27 through both a history of the AEPA and a discussion on why it was not persuaded by
 28 *Medina* in reaching its conclusion. *Id.* at *2–3. The Court continues to agree with this

1 interpretation of AEPA' exclusive remedies provision. Accordingly, because Plaintiff's
 2 AEPA claim is based on a statute with its own remedies, the Court finds it is barred as a
 3 matter of law. Therefore, the Court will grant Defendant's Motion as to Plaintiff's
 4 wrongful termination claim.

5 **C. Good Faith and Fair Dealing**

6 Arising out of his claims for unpaid wages and wrongful termination, Plaintiff also
 7 brings a claim for breach of the covenant of good faith and fair dealing. (Doc. 31 at 11.)
 8 Defendant moved for summary judgment on this claim as well. (Doc. 58 at 13.) For the
 9 reasons explained below the Court will deny this Motion as to this claim.

10 "Arizona law implies a covenant of good faith and fair dealing in every contract."
 11 *Bike Fashion Corp. v. Kramer*, 46 P.3d 431, 434 (Ariz. Ct. App. 2002) (cleaned up).
 12 "[I]mplied terms are as much of a contract as are the express terms." *Wells Fargo Bank v.*
 13 *Ariz. Laborers, Teamsters & Cement Masons Loc. No. 395 Pension Tr. Fund*, 38 P.3d 12,
 14 28 (Ariz. 2002). "The purpose of such terms is so 'neither party will act to impair the right
 15 of the other to receive the benefits which flow from their agreement or contractual
 16 relationship.'" *Bike Fashion Corp.*, 46 P.3d at 434 (cleaned up). Arizona law also
 17 recognizes that "a party can breach the implied covenant of good faith and fair dealing both
 18 by exercising express discretion in a way inconsistent with a party's reasonable
 19 expectations and by acting in ways not expressly excluded by the contract's terms but
 20 which nevertheless bear adversely on the party's reasonably expected benefits of the
 21 bargain." *Id.* at 435.

22 Plaintiff alleges that Defendant violated the covenant of good faith and fair dealing
 23 by failing to (1) pay earned commissions under the May Agreement; (2) failing to provide
 24 a proper accounting for refusing to pay, and; (3) by terminating Plaintiff to avoid paying
 25 earned commissions. (Doc. 31 at 11–12.) Defendant, however, argues that Plaintiff cannot
 26 recover in tort in an employment case unless a public policy is violated—which Plaintiff
 27 has not demonstrated here. (Doc. 58 at 13); *see Nelson v. Phoenix Resort Corp.*, 181 Ariz.
 28 188, 198 (Ariz. Ct. App. 1994). The Court disagrees.

Defendant is correct that under Arizona law a Plaintiff may only have a cause of action in tort for breach of good faith and fair dealing where the alleged action is in violation of public policy. *See Gorney v. Arizona Bd. of Regents*, 43 F. Supp. 3d 946, 963 (D. Ariz. 2014), *aff'd*, 668 F. App'x 725 (9th Cir. 2016) (unpublished) (“[I]n Arizona, a tortious bad faith cause of action arising out of a breach of employment agreement, when no public policy is violated, is prohibited.”) (cleaned up). This, however, is a slight red herring. As described above, even though Plaintiff does not have a cause of action under AEPA, Plaintiff *does* adequately allege Defendant violated the Fair Wages Act—a public policy of Arizona.

This said, even outside of alleging a violation of the Fair Wage Act, Plaintiff demonstrates a colorable issue of fact concerning how contracted for discretionary bonuses were calculated, and how, if at all, Maximus accounted for and investigated Plaintiff's voiced concerns around compensation. (Doc. 67 at 6 ¶¶ 33, 49); *see Kelly v. Skytel Commun., Inc.*, 32 F. App'x 283, 285 (9th Cir. 2002) (unpublished) (“[W]hen a contract confers on one party a discretionary power affecting the rights of another, the party with the discretionary power must exercise it in good faith and in accordance with fair dealing.”). Every contract comes with an implied “right to receive the benefits of their contractual relationship.” *See Wong v. White Rock Phlebotomy, LLC*, No. CV-23-00234-TUC-EJM, 2024 WL 897002, at *5 (D. Ariz. Feb. 13, 2024), *report and recommendation adopted*, No. CV-23-00234-TUC-EJM, 2024 WL 894709 (D. Ariz. Mar. 1, 2024). Here, Plaintiff has sufficiently shown an issue of fact as to whether Defendant honored this right. Accordingly, Defendant's Motion will be denied as to Plaintiff's claim for breach of the covenant of good faith and fair dealing.

IV. CONCLUSION

For the above reasons,

IT IS ORDERED granting in part and denying in part Defendant Maximus Federal Service's Motion for Summary Judgment (Doc. 51).

IT IS FURTHER ORDERED granting summary judgment in favor of Defendant

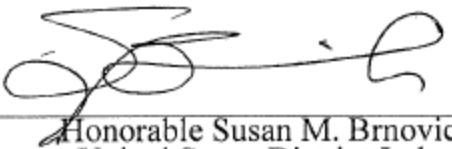
1 on Plaintiff's unpaid wages claim (Count I) related to fiscal years 2019 and 2020.

2 **IT IS FURTHER ORDERED denying** summary judgment in favor of Defendant
3 on Plaintiff's unpaid wages claim (Count I) related to fiscal years 2021 and 2022.

4 **IT IS FURTHER ORDERED granting** summary judgment in favor of Defendant
5 on Plaintiff's wrongful termination claim (Count III).

6 **IT IS FURTHER ORDERED denying** summary judgment on Plaintiff's claim for
7 breach of the covenant of good faith and fair dealing (Count II).

8 Dated this 12th day of August, 2024.

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12 Honorable Susan M. Brnovich
13 United States District Judge
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